

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

**James L. David Reid,**

*Plaintiff,*

**Case No. 3:04-cv-355**

**Judge Thomas M. Rose**

**v.**

**Valley View Local School**

**Chief Magistrate Judge Michael R. Merz**

**District Board of Education,**

*Defendant.*

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**ENTRY AND ORDER ADOPTING REPORTS AND RECOMMENDATIONS  
OF THE UNITED STATES CHIEF MAGISTRATE JUDGE (DOCS. 41 & 42),  
GRANTING IN PART DEFENDANT'S MOTION TO DISMISS, (DOC. 6),  
GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT,  
(DOC. 29), WITH REGARD TO ALL REMAINING CLAIMS, ORDERING  
ENTRY OF JUDGMENT IN FAVOR OF DEFENDANT AND AGAINST  
PLAINTIFF ON ALL COUNTS, AND TERMINATING CASE.**

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Pursuant to an order of reference, Chief Magistrate Judge Michael R. Merz has filed two reports and recommendations in the instant case: one recommending that the Court grant in part Defendant's motion to dismiss the second and third claims of Plaintiff's four-claim complaint, doc. 41, the other recommending that the Court grant Defendant's motion for summary judgment on the claims that remain. Doc. 42. The first report and recommendation recommends dismissing count three of the complaint and allowing an amendment to the fourth claim. Plaintiff has not objected.

Defendant, however, has objected. Doc. 43. Defendant's objection is not to the recommendation that the Court not dismiss the fourth count, but to the basis for the recommendation that the third count be dismissed. Doc. 43. In the absence of an objection from Plaintiff,

Defendant's objection is moot. The Court will therefore adopt the report and recommendation, doc. 41, and grant Defendant's motion to dismiss as regards the third claim of the complaint. Doc. 6.

The second report and recommendation would grant Defendant's motion for summary judgment on all remaining claims. Doc. 42. The report and recommendation finds that there was no evidence that Defendant's asserted non-discriminatory reason for terminating Plaintiff was pretextual and that Plaintiff had failed to exhaust available remedies for the fourth claim. This time Defendant objected to the manner in which the magistrate construed evidence and to two findings of law. Doc. 44. These objections will also be moot if the Court rejects the objections that Plaintiff filed with regard to the same report and recommendation.

Plaintiff's objection claim that the magistrate failed to consider the evidence that established a *prima facie* case of discrimination for the first two claims as disproving by inference Defendant's asserted non-discriminatory reason for dismissal as pretext. Doc. 45. As required by 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72(b), the District Judge has made a *de novo* review of the record in this case.

Defendant has asserted the Plaintiff was discharged for misconduct that was detailed in charges and specifications that were submitted for a hearing to a neutral referee, as required by Ohio law before terminating a tenured school teacher. In his response and objections, Plaintiff asks the Court to consider evidence that Defendant was aware of his disability or considered him to be disabled when he was not, as evidence that would disprove, if believed by a jury, Defendant's claim that he was terminated for cause. While a trier of fact may consider evidence establishing a plaintiff's *prima facie* case when determining whether a defendant's explanation is pretextual, *Reeves v. Sanderson Plumbing Prod., Inc.*, 530 U.S. 143 (2000), nothing in the evidence supporting

the instant *prima facie* case refutes Defendant's asserted non-discriminatory reason for discharging Plaintiff.

Thus, having completed a *de novo* review, the Court **ADOPTS** the Chief Magistrate Judge's reports and recommendations. Doc. 41 & 42. Defendant's Motion to Dismiss, doc. 6, is **GRANTED** as regards Plaintiff's third claim. Defendant's Motion for Summary Judgment, doc. 29, is **GRANTED** as regards all remaining claims. The Clerk will enter judgment in favor of Defendant Valley View Local School District Board of Education and against Plaintiff James L. David Reid. The captioned cause is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

**DONE** and **ORDERED** in Dayton, Ohio, this Thursday, March 2, 2006.

/s/ Thomas M. Rose

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THOMAS M. ROSE  
UNITED STATES DISTRICT JUDGE